MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street Conference Room 308 Phoenix, Arizona 85007

Wednesday, September 5, 2012 - 1:00 p.m.

Present:

David Parker

Chairman (video conference)

Kathleen Oster

Vice Chair

John A. McCarthy, Jr.

Member

Susan Strickler

Member (telephonic)

Michael G. Sanders

Member

Laura McGrory

Director

Andrew Wade

Chief Counsel

Darin Perkins

Director, ADOSH

Michael Hawthorne

Chief Financial Officer

Teresa Hilton

Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Vice Chair Oster had not yet arrived. Also in attendance were Scot Butler, the agency's lobbyist, and Eda Barolli of Snell & Wilmer.

Approval of Minutes of August 22, 2012 Meeting

The Commission unanimously approved the Minutes of the August 22, 2012 meeting on motion of Mr. Sanders, second of Mr. McCarthy.

Consent Agenda:

Approval of Proposed Civil Penalties Against Uninsured Employers. a.

A Caring Solution Home Care, LLC 1. 2C11/12-2861

AZ Pool Care Repair & Remodeling, L.L.C. 2. 2C11/12-0896

Bruce Arnold, A Single Man, dba 2C11/12-2370 3.

Bruce's Automotive Specialists

Dysart & Santa Fe Food & Gas, L.L.C. 4. 2C11/12-1948

Gullatte Investments A, L.L.C. 2C10/11-2135 5.

6. 2C11/12-1114 Morning Glory Adult Care, L.L.C.

Outdoorsman RV Repair Center, Inc. 2C12/13-0015 7.

Rae and Yong Pak, L.L.C. dba 8. 2C11/12-2488

Oishi Sushi & Teriyaki

Robert Jewell, A Single Man, dba 9. 2C12/13-0000

Affordable Movers

Chairman Parker asked whether any items needed to be removed from the consent agenda. Secretary Hilton stated that there were not. The Commission unanimously approved the consent agenda on motion of Mr. Sanders, second of Mr. McCarthy.

Discussion & Action of ADOSH Discrimination Complaints

#12-23 Juan Carrillo v. Sav-On Plating, Inc. - Mr. Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Carrillo. In his complaint, Mr. Carrillo alleges he was terminated for filing a workers' compensation claim and for asking for personal protective equipment. In response to the complaint, the employer presented its position with respect to Mr. Carrillo's separation from employment.

Mr. Perkins presented a history of Mr. Carrillo's employment and chronology of events and responded to questions from the Commission. The Division recommendation was not to pursue the complaint because there was insufficient evidence to support a causal link between protected activity and adverse action. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. Sanders, second of Mr. McCarthy.

#12-62 Kylie Miller v. Ginny's Wash House, LLC - Mr. Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Ms. Miller. In her complaint, Ms. Miller alleged she notified her co-worker, Mireya Mendoza, that she had concerns about possible exposure to Hepatitis C from handling soiled laundry. She alleged she was terminated because she believes Ms. Mendoza told the owner, Mr. Notaro, of her concerns. In response to the complaint, the employer presented its position with respect to Ms. Miller's separation from employment.

Mr. Perkins presented a history of Ms. Miller's employment and chronology of events and responded to questions from the Commission. The Division recommendation was not to pursue the complaint because there was no direct evidence to support a causal link between protected activity and adverse action. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. McCarthy, second of Mr. Sanders.

Discussion & Action of Proposed OSHA Citations & Penalties

Aero Design & Manufacturing, Inc. dba

ADM PRV Aerospace

3409 E. Wood Street

Planned

Yrs/Business - 46

Empl. Cov. by Insp. – 90

Phoenix, AZ 85040

Site Location: 3409 E. Wood Street, Phoenix, AZ 85040

Inspection #: H1793/316592773

Insp. Date: 07/02/12

<u>SERIOUS</u> – Citation 1 - Item 1 - A written lockout/tagout program was not developed and implemented for maintenance personnel or repair persons to prevent the release of stored energy during the performance of repair work on cutting, grinding and milling machines (1910.147(c)(1)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

 $\underline{SERIOUS}$ – Citation 1 - Item 2 – Employees were operating a forklift without adequate training and evaluation (1910.178(I)(1)(i)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS - Citation 1 - Item 3 - One horizontal band saw did not have the unused portion of the blade guarded (1910.212(a)(1)). There was another instance of this violation.

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS - Citation 1 - Item 4 - The angular exposure of the grinding wheel periphery and sides on a horizontal surface grinder exceeded 150 degrees (1910.215(b)(5)).

Div. Proposal - \$1,400.00

Formula Amt. - \$1,400.00

TOTAL PENALTY - \$6,650.00

TOTAL FORMULA AMT. - \$6,650.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to Following discussion, the Commission unanimously questions from the Commissioners. approved issuing the citations and assessed the recommended penalty of \$6,650.00 on motion of Mr. McCarthy, second of Mr. Sanders.

LGS AZ, LLC dba Look Trailers

Complaint

8230 N. El Mirage Road

Yrs/Business - 2

El Mirage, AZ 85335

Empl. Cov. by Insp. – 50

Site Location: 8230 N. El Mirage Road, El Mirage, AZ 85335

Inspection #: N9589/316631027

Insp. Date:

07/25/12

GROUPED SERIOUS - Citation 1 - Item 1(a) - Three differential pressure gauges (manometers) installed to indicate required air velocity were not functional. The subject gauges did not have any indicating solution (1910.107(b)(5)(i)).

Citation 1 - Item 1(b) - The spraying area was not provided with mechanical ventilation adequate to remove flammable vapors, mists or powders to a safe location and to confine and control combustible residues in that only one of the two exhaust fans were operational, the front and rear doors of the booth were open during spraying, and a substantial number of filters used to catch and contain combustible overspray were missing (1910.107(d)(2)).

Citation 1 - Item 1(c) - The spraying area was not kept free from the accumulation of deposits of combustible residue. Air filters had fallen from the walls and were covered with overspray. The west doors to the spray booth could not be closed due to accumulation of paint overspray (1910.107(g)(2)).

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

SERIOUS - Citation 1 - Item 2 - Flammable paints used in spraying operations were transferred from one container to another without both containers being effectively bonded and grounded. Fifty-five gallon containers of flammable paint and the paint sprayer were not bonded and grounded (1910.107(e)(9)).

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

GROUPED SERIOUS - Citation 1 - Item 3(a) - The written respiratory protection program that included the provisions in 1910.134(c)(1)(i) - (ix) with worksite specific procedures was not established and implemented for required respirator use (1910.134(c)(1)).

Citation 1 - Item 3(b) - Employees were not provided a medical evaluation prior to wearing fullface air purifying respirators during spray finishing (1910.134(e)(1)).

Citation 1 - Item 3(c) - Employees required to wear full-face tight fitting air purifying respirators during spray finishing were not fit tested (1910.134(f)(2)).

Citation 1 - Item 3(d) — Employees required to wear full-face air purifying respirators during spray finishing were not provided training (1910.134(k)(3)).

Div. Proposal - \$1,600.00

Formula Amt. - \$1,600.00

<u>SERIOUS</u> – Citation 1 - Item 4 – Workers and other person adjacent to the welding area were not protected from the rays by screens or shields (1910.252(b)(2)(iii)).

Div. Proposal - \$1,400.00

Formula Amt. - \$1,400.00

TOTAL PENALTY - \$7,000.00

TOTAL FORMULA AMT. - \$7,000.00

Darin Perkins summarized the citations and proposed penalty as listed. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$7,000.00 on motion of Mr. Sanders, second of Mr. McCarthy.

Preferred Packaging and Crating, Inc.

Referral

3330 W. Cocopah Street, Suite 1

Yrs/Business – 24

Phoenix, AZ 85009

Empl. Cov. by Insp. -4

Site Location: 3330 W. Cocopah Street, Suite 1, Phoenix, AZ 85009 Inspection #: L3419/316631134

Insp. Date:

07/30/12

<u>SERIOUS</u> – Citation 1 - Item 1 – Horizontal rotating shafting used to pull labeling through the machine was not effectively guarded to prevent the operator from coming in contact with moving parts, pinch points and in going nip points (1910.212(a)(1)). There was another instance of this violation.

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

<u>SERIOUS</u> – Citation 1 - Item 2 – A horizontal rotating shaft located under the laminator was not effectively enclosed on all sides to prevent the operator from accidently or inadvertently coming into contact with the rotating shaft during routine minor servicing or maintenance to the machine including but not limited to observing for leaks or cleaning spills (1910.219(c)(2)(i)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

 $\underline{SERIOUS}$ – Citation 1 - Item 3 – A 1" diameter shaft projected more than one-half the diameter of the shaft and was not guarded by a non-rotating cap or sleeve (1910.219(c)(4)(i)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

<u>SERIOUS</u> – Citation 1 - Item 4 – A drive sprocket and chain located below the laminator was not fully enclosed to prevent the operator from accidently or inadvertently coming in contact with the sprocket or chain (pinch point, in-going nip points) during routine minor servicing or maintenance to the machine including but not limited to observing for leaks or cleaning up spills (1910.219(f)(3)).

Div. Proposal - \$ 2,500.00

Formula Amt. - \$ 2,500.00

TOTAL PENALTY - \$12,500.00

TOTAL FORMULA AMT. - \$12,500.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. The Division recommendation for Citation 1 – Item 2 was

for the gravity-based penalty with no adjustment factors because the violation caused or contributed to an employee's serious injury. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$12,500.00 on motion of Mr. McCarthy, second of Ms. Strickler.

Discussion &/or Action regarding Legislation

Scot Butler provided a summary of primary election results and responded to questions from the Commissioners. Mr. Butler stated that he intends to present information regarding ballot propositions and the general election ballot at the end of September or beginning of October.

Ms. Oster arrived during the above discussion.

Discussion & Action regarding Consideration of Assessments under A.R.S. §§23-961(J), 23-966(D), 23-1065(A), and 23-1065(F) for Calendar Year 2013

Michael Hawthorne advised that the Commission has statutory authority to levy four assessments and he described the assessments and the purposes for each assessment. He provided the Commissioners with an updated cash flow analysis. He explained that the Commission may assess a maximum of 3.0% premium tax for the administrative fund and that the Commission established this rate for calendar year 2012. He provided projections for calendar years 2012 and 2013 taxable premiums. He presented an analysis of different options and he stated that staff was recommending the option that reduced the Administrative Fund premium tax to 2.50% for calendar year 2013, and he provided an explanation for the recommendation.

Mr. Hawthorne then described the financial condition of the Special Fund and stated that the Fund continues to be actuarially unsound with a net asset deficit (at a confidence level of 75%) as of June 30, 2011 of \$14.1 million. If the confidence level is increased to 80%, the actuarial deficit increases to \$54.3 million. Mr. Hawthorne stated that to fully protect the beneficiaries of the Special Fund by ensuring the Fund can meet its statutory obligations, staff recommends the confidence level be increased to 80%. Balancing the desire to reduce the tax burden, and in view of the ongoing net asset deficit position of the Special Fund, annual expenditures that exceed projected assessment, uncertain investment returns, apportionment liabilities that exceed six million dollars, and a net loss incurred under A.R.S. § 23-966, he stated that staff recommends that the Commission establish the §§ 23-966(D), 23-1065(A), and 23-1065(F) assessments at 0.5%, 1.25% and 0.5% respectively for calendar year 2013. This recommendation would reduce the total Special Fund assessments to 2.25% for calendar year 2013 from the current assessment rate of 2.5% for calendar year 2012.

Chairman Parker stated he would like to address how the Commission will define "actuarially sound," then address the Administrative Fund premium tax and then the Special Fund assessments. He explained the confidence level and stated he would be more comfortable with the 80%. Ms. Strickler expressed her concern for self-insured entities with raising the confidence level and stated that there needs to be a balance. In response to a question from Chairman Parker, Ms. McGrory explained why the Special Fund faces greater risks associated with its statutory obligations and that from staff's perspective it makes sense to increase the confidence level. She stated the recommendation made by staff attempts to achieve a balance

between lowering the assessment rates, while addressing the Special Fund's net asset deficit. Ms. Oster stated that the Commission has a fiduciary responsibility to the Special Fund and she stated that an 80% confidence level would be more appropriate and why. Further discussion followed regarding the definition of "actuarially sound." The Commission set the confidence level for the Special Fund at 80% on motion of Mr. Parker, second of Ms. Oster. Ms. Strickler voted against the motion. The motion passed four votes in favor and one against.

Mr. Parker stated that the next question is where to set the Administrative Fund tax; to stay at 3.0% or to reduce the tax to 2.75% or 2.5%. The Commission discussed the three alternatives. Mr. Parker stated that reducing the tax .25% is moving in the right direction. Mr. Sanders and Mr. McCarthy agreed. Ms. Strickler stated she was in favor of lowering the assessment. Ms. Oster stated she did not want to have to go back next year and increase the tax. Further discussion followed regarding projected revenue and the effect of insolvencies. Mr. Sanders explained that he would be more comfortable with a reduction of .25%, rather than .5% and explained why. Ms. Strickler questioned whether there were other alternatives for additional revenue or funding sources other than taxes/assessments. The Commission discussed the revenue sources of the Industrial Commission and the ongoing lawsuit regarding the attempted sweep of the Special Fund money.

Mr. McCarthy made a motion to set the Administrative Fund tax at 2.5% for calendar year 2013 which died for lack of a second. The Commission unanimously set the Administrative Fund tax at 2.75% for calendar year 2013 on motion of Mr. Sanders, second of Ms. Oster.

Noting the Special Fund's net asset deficit and the losses incurred under A.R.S. § 23-966, the Commission unanimously set the Special Fund § 23-966(D) insolvencies assessment at 0.5% on motion of Mr. Sanders, second of Mr. McCarthy.

Noting that the Special Fund's apportionment liabilities under § 23-1065(F) exceed \$6 million, the Commission unanimously set the § 23-1065(F) assessment at 0.5% for calendar year 2013 on motion of Ms. Oster, second of Mr. Sanders.

The Commission unanimously set the § 23-1065(A) Special Fund general assessment at 1.25% for calendar year 2013 on motion of Mr. Sanders, second of Mr. McCarthy.

Announcements and Scheduling of Future Meetings

The Commission changed the meeting scheduled for October 10, 2012 to October 3, 2012. The December 5, 2012 meeting was changed to "if needed" and the December 12, 2012 meeting was confirmed.

There being no further business to come before the Commission and no public comment, Chairman Parker adjourned the meeting at 3:00 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

Laura L. McGrory, Director

ATTEST:

Tuga Hilton, Commission Secretary